



Defense Acquisition University

FISCAL Law Lunch and Learn



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Questions To Ponder

1. For FY 2010, 2011 and 2012 what was the largest single reported amount on the “GAO Antideficiency Act violation report” website?
A. \$16K B. \$1.6M C. \$16M D. \$160M **E. \$1.4B**

2. Of the reported fiscal law violations shown on the “GAO Antideficiency Act violation report” website for FY 2010, 2011 and 2012 how many were from the Department of Defense?
A. None B. 11 C. 21 **D. 37** E. 61

Source: <http://www.gao.gov/legal/lawresources/antideficiencyrpts.html>

Misappropriation Act [Title 31, US Code, Sec 1301]

- Requires that appropriated funds be used **only for the purposes and programs** for which appropriation was made

Purpose
or
Color

Bona Fide Need Rule [Title 31, US Code, Sec 1502]

- Requires that appropriated funds be used only for **needs or services that arise in the year(s)** of the appropriation's obligation availability period

Time
or
Year

Antideficiency Act [Title 31, US Code, S 1341,1517]

- Prohibits making or authorizing an obligation **in excess** of the amount available in the appropriation
- Forbids obligating funds **in advance** of appropriation
- Requires regulations to ensure obligations are kept within appropriated or sub-divided amounts and to **fix responsibility** for violations of the Act

Amount

Availability of Appropriations: PURPOSE

- Congress has “Power of the Purse”



“No Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law....”

- The Constitution of the United States, Article I, Section 9, clause 7

- Misappropriation Act:
“Appropriations shall be applied only to the objects for which the appropriations were made...”
 - 31 USC § 1301(a)

Availability of Appropriations: TIME

- The “Bona Fide Need” Rule:
“The balance of an appropriation or fund limited for obligation to a definite period is available only for payment of expenses properly incurred during the *period of availability...*”

- 31 USC §1502(a)



Periods of Availability

RDT&E	2 years
PROC	3 years
O & M	1 year
MILPERS	1 year
MILCON	5 years

Bona Fide Need

- **Supply Items: When are the supplies needed for use?**
 - Lead-time exception (consider normal production lead time)
 - Stock Level exception (replace stock consumed in current year with current year funds)
 - Stock piling of supplies at end of FY is PROHIBITED
- **Service Contracts: Bona fide need of FY the services are performed.**
 - Nonseverable services exception (single, unified outcome, product or report: may fund entire effort with current year funds & execution may cross FYs.) Single effort that cannot be feasibly subdivided
- **Severable Service Contract (Exception):** Statutory provision (PL 105-85, Sec. 801 & Title 10, U.S. Code 2410a) allows funding a severable service contract/task beginning in one FY and ending in the next FY, all in the first year, if the contract period does not exceed 12 months

Availability of Appropriations: Appropriation Life

- The Time Rule:
“On September 30th of the 5th fiscal year after the *period of availability* for obligation of a fixed appropriation account ends, the account shall be closed and any remaining balance (whether obligated or unobligated) in the account shall be canceled and thereafter shall not be available for obligation or expenditure for any purpose.”

– 31 USC §1552(a)



Periods of Availability

RDT&E	2 years
PROC	3 years
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MILPERS	1 year
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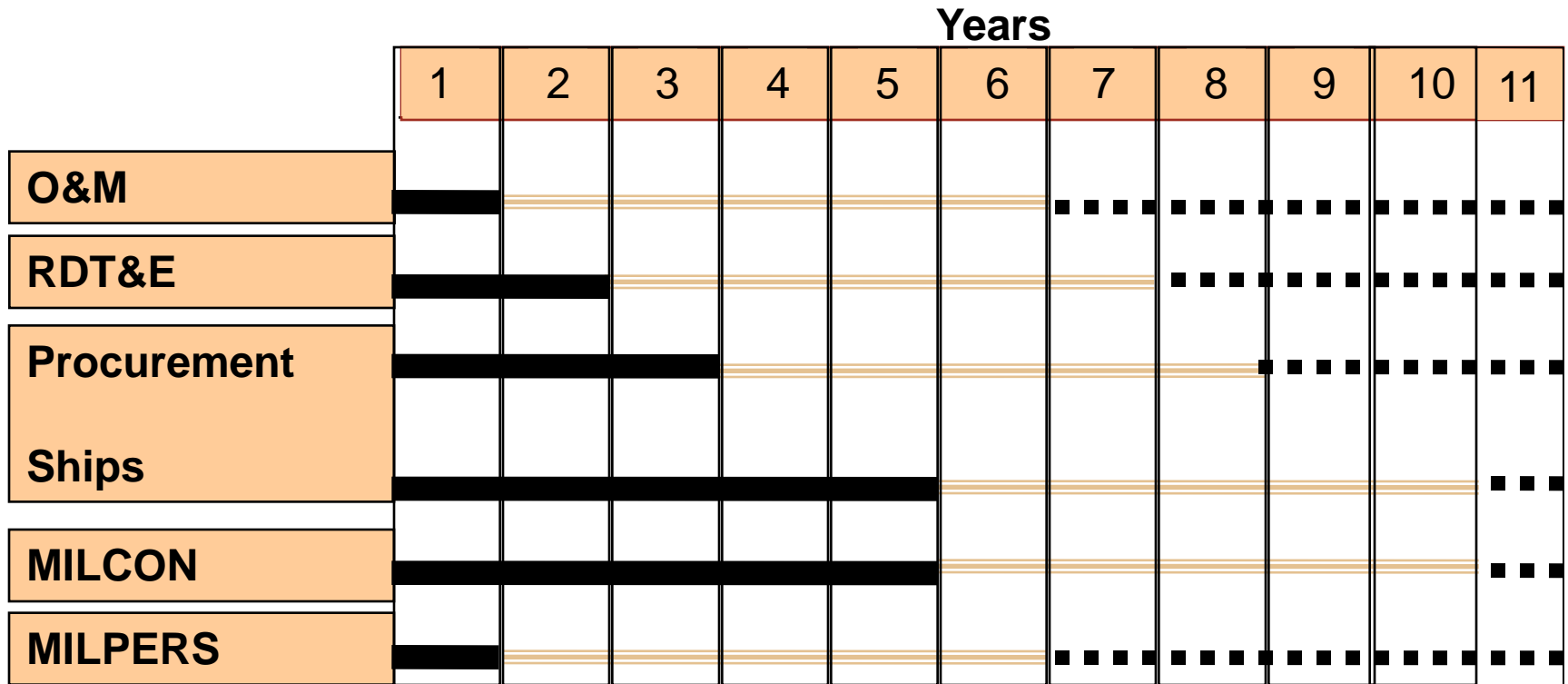
Paying Certified (Valid) Invoices (DoD FMR Volume 3, Chapter 10)

- If the invoice is received during the “*current*” status of the appropriation, pay with fiscal year funds cited for that original* obligation (e.g. contract, contract mod)
- If the invoice is received during the “*expired*” status of the appropriation, pay with fiscal year funds cited for that original* obligation (e.g. contract, contract mod)
- If the invoice is received during the “*canceled*” or “*closed*” status of the appropriation, pay with currently available funds of the same appropriation account cited for that original* obligation (e.g. contract, contract mod)

*Note, originally cited appropriation retains its accounting identity through the “current” and “expired” periods; accounting identify is lost when the appropriation is “canceled” or “closed”

Appropriation Life Cycle

Appropriation Life by Category



Current Period: Available for new obligations, obligation adjustments, expenditures, and outlays



Expired Period: Available for obligation adjustments, expenditures, and outlays, but no new obligations



Canceled: Unavailable for obligations, obligation adjustments, expenditures, and outlays

Availability of Appropriations: AMOUNT



- The [Antideficiency Act](#) (ADA) prohibits making or authorizing expenditures or incurring obligations *in excess or in advance of an appropriation*
 - 31 USC §1341(a)
- The ADA prohibits “expenditures or obligations *exceeding an apportionment or the amount permitted by regulations...*”
 - 31 USC §1517(a)
- Heads of executive agencies shall prescribe by regulation a system of **administrative control** to: (1) **restrict obligations or expenditures** to the amount of apportionments or reappropriations of the appropriation; and, (2) **fix responsibility** for exceeding an appropriation or reappropriation
 - 31 USC §1514(a)

Most Frequent Violations of the Antideficiency Act*

- Exceeding limits on the use of Operation and Maintenance (O&M) funds for minor construction projects
(exceeding the amount permitted by regulations)
- Exceeding the fund availability amount in an appropriation or exceeding the amount of an allotment/suballotment
(often results through failure to record obligating documents in a timely or accurate manner)
- Using O&M funds to acquire equipment items that exceed the designated amount for mandatory use of procurement funds
(expense versus investment threshold rule)
(exceeding the amount permitted by regulations)
- Obligating in advance of funds being made available

*Source: DoD Financial Management Regulation, Volume 14, Chapter 2

Most Frequent Causes of Violations of the Antideficiency Act*

- **Established internal controls and standard operating procedures not followed**
- **Inadequate supervisory involvement or oversight**
- **Lack of appropriate training**
- **Inadequate standard operating procedures and internal controls**

***Source: DoD Financial Management Regulation, Volume 14, Chapter 2**

Practice # 1 Fiscal Law

Time is FY 07. Your program has both RDT&E and Procurement funds available for new obligations.

The PCO awarded an R&D contract citing a FY07 procurement appropriation. Action did not exceed procurement appropriation.

Violation of Misappropriation Act

Title 31, US Code, Sec 1301

Appropriated funds are to be used only for the purposes and programs for which the appropriation was made.

Practice # 2 - Fiscal Law

Time is FY 07. Your program has both RDT&E and Procurement funds available for new obligations.

The PCO signed a FY07 procurement funded contract for an amount greater than the amount allotted to the program.

Violation of Antideficiency Act (in excess)

Title 31, US Code, Sec 1517(a)

The ADA prohibits “expenditures or obligations exceeding an apportionment or the amount permitted by regulations...”

Practice # 3 - Fiscal Law

Time is FY 07. Your program has RDT&E, O&M and Procurement funds available for new obligations.

The PCO signs a contract citing FY07 O&M funds for new desktop PCs that he expects to need in FY09

Violation of Bona Fide Need Rule

Title 31, US Code, Sec 1502(a)

Appropriated funds are “available only for payment of expenses properly incurred during the period of availability” of the funds



Practice # 4 - Appropriation Life

- Time is 1 Oct 06. Your program has both RDT&E and Procurement funds available for new obligations.
 - The program office receives an invoice citing FY03 RDTE. How should the invoice be paid?
1. Is this bill categorized as Current - Expired - Cancelled?
 2. Which fiscal year (or years) should the invoice be paid?
 3. Does the bill have to be paid out of the same FY and program element line cited in the original obligation?

- 1. Bill Category is Expired
- 2. FY03
- 3. YES: FY and PE must be the same

Questions or Comments???

